

South Dakota Department of Agriculture
FY 2016 Inspection File Review Summary

Introduction

EPA appreciates the effort South Dakota Department of Agricultural (SDDA) dedicates to operating an efficient pesticide inspection and enforcement program. EPA also appreciates the good working relationship with SDDA. The following discusses the end of year review and potential areas of improvement.

Results of Review

For the FY 2016 End of Year review EPA assessed 14 inspection reports: three pesticide use inspections, five producer establishment inspections, three restricted use pesticide dealer inspections, and three enforcement actions. EPA also reviewed 3 complaints that were handled by SDDA.

The first two of the inspections reviewed were non-agriculture use inspections. These completed inspections raise some concerns for EPA. During the residential treatment for bedbugs performed by All Seasons Pest, a review of the information in the inspection forms show Cyzmic CS was mixed with Tempo 1% Professional Dust Insecticide. It appears an incomplete EPA registration number for Cyzmic CS was listed on the *Pesticide Use Inspection Report*. Comparing the use rates listed on the pesticide labels show that the pesticides were applied at rates that are in compliance with the label directions and both pesticides are registered for use on bedbugs. The third inspection reviewed was an agricultural use inspection. The full registration number was listed, and applications were made at use rates and on target pests that are in compliance with label directions.

The next set of inspection reports reviewed were the producer inspections performed under state authority. EPA is concerned that in a few instances potential violations found during these inspections were not forwarded to EPA for enforcement follow up. The first was the Hefty Seed Company located in Baltic, South Dakota, in which the inspector noted outdated labels. This constitutes selling a misbranded pesticide, in violation of section 12(a)(1)(E) of FIFRA. The second instance was Fremar, LLC located in Viborg, South Dakota, in which the inspector noted two tanks did not have the proper EPA establishment number, outdated labels, an outdated Monsanto repackaging agreement and a missing Syngenta repackaging agreement. These constitute selling a misbranded pesticide, in violation of FIFRA 12(a)(1)(E), and production of an unregistered pesticide, in violation of FIFRA section 12(a)(1)(A). These noncompliance issues were not sent to EPA for further enforcement. EPA would like to re-emphasize that EPA has not delegated this authority to states as a part of state's primacy to enforce use violations; however, EPA would like to acknowledge and encourage the recent improvements that SDDA has recently made by sending EPA these noncompliance issues when discovered. These inspections were for Kelsey Ag Services, South Dakota Wheat Grower, and Dakota Agro. EPA looks forward to working closely with SDDA on these types of collaborative enforcement opportunities.

EPA also reviewed three restricted use pesticide dealers. Based on the information provided by the inspector and on the inspection checklists the enforcement responses for violations noted for Estelline Community Oil Company located in Estelline, South Dakota; Fremar, LLC located in Fremar, South Dakota; and Jaegair, LLC located in Harrold, South Dakota appear to be within the State's enforcement response policy.

The three complaints that were reviewed and handled by SDDA were of spray drifting of herbicides damaging adjacent properties. One of the complaints resulted in a settlement agreement that totaled \$1237.00. The other two complaints were addressed with a warning letter being sent. All three drift complaint responses were within the State's enforcement response policy. The review of these complaints resulted in a minor item EPA would like to highlight. In the Leesman vs. Mundt Brothers Farm drift inspection file the Sample Collection Report, the inspector did not have the chain of custody portion of the Sample Collection Report signed relinquishing custody of the samples to the lab. EPA recommends SDDA make sure all pertinent information is filled out to the best of their ability.

SDDA reported that they had no bee kills resulting from pesticide use. SDDA indicated that they had one bee kill investigation; however, the spray drift did not result in an actual bee kill.

Violations

For the FY 2016 End of Year review the EPA assessed 3 restricted use pesticide dealer enforcement actions taken by SDDA. The enforcement actions were comprised of warning letters being sent to Estelline Community Oil Company, Fremar, LLC, and Jaegair, LLC for violation of SDCL 38-21-44(2), it is a violation to make a recommendation or application inconsistent with the label.

All three complaints resulted in enforcement actions being taken. Two of the violations were addressed with warning letters. The other violation resulted in a settlement agreement with a penalty of \$1237.00.

Recommendations/Conclusions

Based on the review of the inspection reports provided by SDDA, EPA has the following suggestions that will assist SDDA improve the inspection reports and subsequent enforcement actions. EPA thanks SDDA for the recent improvements made by forwarding to EPA noncompliance issues discovered during producer establishment inspections for enforcement follow-up. Additionally, EPA suggests that more details should be included for all inspection. EPA believes the checklists are useful but are not meant to be the complete inspection report. EPA also suggests SDDA review their inspections procedures with all of their inspectors and case developers to assure that all relevant information collected is accurate and complete and supports the enforcement response taken by the South Dakota Department of Agriculture.